In the Matter of the Commission, on its own motion, seeking to conduct an investigation of alternative rate designs for commercial and industrial ratepayers.	))))))	Application No. NG-0030/PI-98

COMMENTS OF KINDER MORGAN, INC.

By its Order Opening Docket entered on June 21, 2005 (Order Opening Docket), the Nebraska Public Service Commission (Commission) requested written comments on alternative rate design for commercial and industrial ratepayers. The customers at issue are higher-consumption commercial and industrial customers of jurisdictional utilities, including Kinder Morgan, Inc. (Kinder Morgan), that do not qualify as high-volume ratepayers within the meaning of Section 66-1802(7) of the State Natural Gas Regulation Act (Regulation Act). Kinder Morgan welcomes the opportunity to comment on the issues raised by the Commission in its Order Opening Docket.

I. Issues Raised by the Commission.

The Commission's Order Opening Docket stated the following non-exclusive list of issues that it wishes to explore in this docket:

1. Whether the Commission has the requisite jurisdiction to require an alternative rate design;

2. Characteristics common to small and mid-size commercial and industrial [ratepayers] whose natural gas consumption does not meet the statutory minimum for "high-volume ratepayers";

3. Possible alternative rate designs for said ratepayers;

4. Technical issues related to implementation of alternate rate designs including but not limited to metering and flow control;

5. Costs associated with implementation of possible alternate rate designs for ratepayers; and

6. Any statutory or regulatory changes necessary for alternate rate designs.

Section VI contains Kinder Morgan's comments on each of the six-listed issues. The sections preceding the statement of Kinder Morgan's issue-by-issue positions explain the genesis of this docket (Section II), address the deference to utility management established in Nebraska case law (Section III), examine the statutory provisions relevant to the issues raised by the Commission in this docket (Section IV), and delineate the relevant provisions of Kinder Morgan's Nebraska Gas Tariff (Section V).

Kinder Morgan continually evaluates its service offerings and rate designs to ensure that it is meeting the needs of its jurisdictional customers. For the reasons explained in these Comments, Kinder Morgan believes its current customer offerings are appropriate. In considering the issues raised in this docket, Kinder Morgan respectfully urges the Commission to retain as its paramount concern the reliability and integrity of the Kinder Morgan system, and the systems of the other Nebraska jurisdictional utilities. The Commission should be especially wary of pursuing any alternative that allows certain classes of customers to benefit from upstream pipeline capacity reserved by Kinder Morgan at the expense of those firm customers for which the capacity is reserved.

II. Genesis of this Docket.

In January 2005, Kinder Morgan filed its "Plan of Action" in Application No. NG-0023.1, by which Kinder Morgan proposed a method for allocating upstream pipeline costs incurred for firm capacity acquired on behalf of twelve jurisdictional customers (hereafter, the "Waiver Customers") that had been granted a waiver by the Commission allowing them to be treated as if they were non-jurisdictional customers through May 31, 2007. Kinder Morgan's Plan of Action proposed that the Waiver Customers bear one-third of the upstream pipeline costs (net of costs avoided through capacity releases) for the twelve month period ending May 2006 and two-thirds of the upstream pipeline costs (net of costs avoided through capacity releases) for the twelve month period ending May 2007. Subsequently, Kinder Morgan entered into a settlement agreement with the Public Advocate which specified that the Waiver Customers would bear 70% of the upstream pipeline costs (net of costs avoided through capacity releases) for the twelve month period ending May 2006 and 80% of the upstream pipeline costs (net of costs avoided through capacity releases) for the twelve month period ending May 2007.

The Commission held a hearing on the Plan of Action on June 10, 2005. Kinder Morgan's testimony at the hearing addressed the prudence of Kinder Morgan's upstream pipeline capacity reservations, the proposed allocation of the upstream pipeline costs among Kinder Morgan's customers and alternative service options for the Waiver Customers. In its Order of June 21, 2005, the Commission approved the settlement agreement and authorized Kinder Morgan to file tariff sheets with Gas Supply Cost Adjustment rates adequate to recover the upstream capacity costs consistent with the settlement agreement. In that Order, the Commission stated with respect to the instant docket:

> The Commission intends to open an investigation to explore less costly and more efficient alternative rate design options for ratepayers similar to the Waiver Customers. The Commission's approval of the settlement agreement between the Public Advocate and Kinder Morgan is granted with the expectation that Kinder Morgan will make a good faith effort to participate in the investigation and explore reasonable options to serve these ratepayers.

The Commission entered its Order Opening Docket that same day. Kinder Morgan assures the Commission that it is now exploring, in the past has explored, and in the future will continue to explore, reasonable options to serve all of its customers, including the Waiver Customers.

III. Required Deference to Utility Management Decisions.

In the recently-concluded Docket No. NG-0023.1 associated with Kinder Morgan's Plan of Action, Kinder Morgan had the opportunity to address the legal standards by which the Commission is required to assess utility actions. These legal principles are relevant to the Commission's deliberations in this docket.

The Nebraska Supreme Court has adopted two key principles that govern the Commission's regulatory oversight of natural gas utilities. The first principle is that "managers of a utility have broad discretion in conducting their business ..." This statement is quoted from the decision of the Federal Energy Regulatory Commission (FERC) in *New England Power Co.*, 31 FERC ¶ 61,047, *reh. den'd*, 32 FERC ¶ 61,112 (1985), *aff'd sub. nom.*, *Violet v. FERC*, 800 F.2d 280 (1st Cir. 1986), wherein the FERC, relying on U.S. Supreme Court precedent, established the proper test for determining the prudence of decisions made by utility management. The Nebraska Supreme Court adopted the *New England Power* test in *K N Energy, Inc. v. Cities of Alliance and Oshkosh*, 266 Neb. 882, 670 N.W.2d 319 (2003), a case arising under the Municipal Natural Gas Regulation Act, the statutory predecessor of the Regulation Act.

The second governing principle enunciated by the Nebraska Supreme Court instructs that "The Commission is not the financial manager of the corporation and it is not empowered to substitute its judgment for that of the directors of the corporation; *Northwestern Bell Telephone Co. v. Nebraska Public Service Commission*, 218 Neb. 563, 357 N.W.2d 443 (1984).

Kinder Morgan respectfully submits that the Commission should adhere to these fundamental legal standards, leaving to the utility the task of developing customer service offerings and the rate designs incorporated in those offerings, while retaining the authority to investigate and correct proven deficiencies in utility rates and services in accordance with the Regulation Act and established court decisions.

IV. The Relevant Statutory Provisions.

Under Section 66-1802(12) of the Regulation Act:

> Rate means every compensation, charge, fare, toll, tariff, rental, and classification, or any of them, demanded, observed, charged, or collected by any jurisdictional utility for any service.

The authority granted to the Commission to regulate the rates of customers depends on the type of customer involved. There are three categories of customers under the Regulation Act.

The first type of customer is the "high-volume ratepayer". Under Section 66-1802(7):

> High-volume ratepayer means a ratepayer whose natural gas requirements equal or exceed five hundred therms per day as determined by average daily consumption.

Under Section 66-1810(1), the Commission's authority with respect to high-volume ratepayers is limited to requesting that the jurisdictional utility file with the Commission the contracts made with such customers. The service provided to high-volume ratepayers is in all other respects outside the jurisdiction of the commission.

The second type of customer is the "agricultural ratepayer". Under Section 66-1802(1):

> Agricultural ratepayer means a ratepayer whose usage of natural gas does not qualify the ratepayer as a high-volume ratepayer and (a) whose principal use of natural gas is for agricultural crop or livestock production, irrigation pumping, crop drying, or animal feed or food production or (b) whose service is provided on an interruptible basis.

Under Section 66-1810(2), the Commission's authority with respect to agricultural and interruptible ratepayers also is limited. While these customers are jurisdictional, the utility is given authority to establish, and to re-establish, upon notice to the commission and to the public, the rates or other charges demanded or received from, and the terms and conditions applicable to, these ratepayers. The Commission is not permitted to suspend such rate or charge filed by a jurisdictional utility. Rather, upon a complaint and following a hearing, the Commission may change any rate or other charge demanded or received from a jurisdictional utility's agricultural and interruptible ratepayers, if such rate or other charge is found to be unduly preferential or unjustly discriminatory.

The third type of customer is the non-agricultural, non-interruptible jurisdictional ratepayer. This includes all of the customers of the jurisdictional utility that are not high-volume ratepayers, interruptible ratepayers or agricultural ratepayers, as defined in the Regulation Act. The rates and charges demanded or received from such customers are established in accordance with the procedures for general rate filings in Section 66-1838 of the Regulation Act. Section 66-1825 of the Regulation Act prescribes the basic principles that the Commission must follow in establishing rates for jurisdictional customers. Changes in a utility's rates, or any term or condition of service pertaining to the service or rates of the utility, not constituting a general rate filing are established following the procedures established in Section 66-1808 of the Regulation Act.[1] Pursuant to this provision, jurisdictional utilities were required to charge the rates in effect

[1] Section 66-1850(2) provides that:

> The rates, terms and conditions of service, and rate areas of a jurisdictional utility in effect on or before May 31, 2003, shall remain in effect after May 31, 2003, and shall be treated as if approved and adopted by the commission pursuant to the State Natural Gas Regulation Act.

as of the date that the Regulation Act became effective, until such time as those rates are changed pursuant to the applicable provision of the Regulation Act. Kinder Morgan has not had a general rate filing under the Regulation Act and, therefore, with the exceptions discussed in these comments, is charging the rates that were in effect prior to May 31, 2003.

As noted, Section 66-1825 of the Regulation Act recites the basic principles that the Commission must follow in establishing rates for jurisdictional customers not defined as agricultural customers. The first sentence of Section 66-1825(1) establishes that:

> Every rate made, demanded, or received by any natural gas public utility shall be just and reasonable.

The second sentence of that section establishes the principle that:

> Rates shall not be unreasonably preferential or discriminatory and shall be reasonably consistent in application to a class of ratepayers.[2]

These provisions permit a utility to negotiate individual rates, service offerings, and terms and conditions of service with high-volume ratepayers, and agricultural ratepayers without such rates, service offerings, and terms and conditions of service being subject to claims that they discriminate against other customers of the utility.

Section 66-1825(2) establishes that:

> No jurisdictional utility shall, as to rates or terms and conditions of service, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage.

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[2] The third and final sentence of Section 66-1825(1) expressly states that:

> Rates negotiated with agricultural ratepayers and high-volume ratepayers in conformity with the State Natural Gas Regulation Act shall not be considered discriminatory.

Finally, Section 66-1825(10) establishes the principle that rate subsidization is prohibited. That section states:

> Subsidization is prohibited. For purposes of this subsection, subsidization means the establishment of rates to be collected from a ratepayer or class of ratepayers of a jurisdictional utility that (a) include costs that properly are includable in rates charged to other ratepayers or classes of ratepayers of the utility, or other persons, firms, companies, or corporations doing business with the jurisdictional utility, (b) exclude costs that properly are includable in rates charged to such ratepayers or classes of ratepayers, or (c) include costs that properly are chargeable or allocable to a nonregulated private enterprise engaged in by such jurisdictional utility.

The Regulation Act gives the Commission two avenues for determining whether a jurisdictional utility's then-effective rates conform to the foregoing principles. First, under Section 66-1809, the Commission may conduct an investigation on its own initiative. That section provides:

> (1) The commission, upon its own initiative, may investigate all schedules of rates, contracts, and terms and conditions of service of jurisdictional utilities. If after notice, investigation, and hearing the commission finds that such rates or terms and conditions of service are unjust, unreasonable, unjustly discriminatory, or unduly preferential, the commission shall have the power to establish and order substituted therefor such rates and such terms and conditions of service as are just and reasonable, effective as of the date of the order.
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> (2) If after investigation and hearing it is found that any term or condition of service, measurement, practice, act, or service complained of is unjust, unreasonable, unduly preferential, unjustly discriminatory, or otherwise in violation of the State Natural Gas Regulation Act or of the orders of the commission or if it is found that any service is inadequate or that any reasonable service cannot be obtained, the commission may substitute therefor, effective as of the date of the order, such other terms or conditions of service, measurements, practices, acts, or service and make such order respecting any such changes in such terms and conditions of service, measurements, practices, acts, or service as are just and reasonable. When, in the judgment of the commission, public necessity and convenience require, the commission may establish just and reasonable rates, charges, or privileges, but all such rates, charges, and privileges shall be open to all users of a like kind of service under similar circumstances and conditions. Hearings shall be conducted in accordance with rules and regulations adopted and promulgated pursuant to section 75-110.

Second, under Section 66-1811, the Commission may investigate a jurisdictional utility upon a complaint made in writing against the utility. That section states:

> (1) Upon a complaint in writing made against any jurisdictional utility (a) that any rates or terms and conditions of service of such utility are in any respect unreasonable, unjust, unjustly discriminatory, or unduly preferential, (b) that any terms and conditions of service or act whatsoever affecting or relating to any service performed or to be performed by such utility for the public, is in any respect unreasonable, unjust, unjustly discriminatory, or unduly preferential, or (c) that any service performed or to be performed by such utility for the public is inadequate, insufficient, or cannot be obtained, the commission may proceed, with or without notice, to make such investigation as it deems necessary.
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> (2) No order changing such rates, terms and conditions, or acts complained of shall be made or entered by the commission without a formal public hearing in accordance with rules and regulations adopted and promulgated pursuant to section 75-110, of which due notice shall be given by the commission to such utility or to such complainant or complainants, if any.
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> (3) The commission shall have power to require jurisdictional utilities to make such improvements and do such acts as are or may be required by law to be done by any such utility, including refunds as authorized by law.
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> (4) The commission may hold public hearings in the area being impacted by any rate investigation or rate increase being considered by the commission to hear public comments.
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> (5) If after investigation and hearing the rates or terms and conditions of service of any jurisdictional utility are found unjust, unreasonable, unjustly discriminatory, or unduly preferential, or in any way in violation of the provisions of the State Natural Gas Regulation Act or of any of the laws of the State of Nebraska, the commission shall have the power to establish, and to order substituted therefor, to be effective as of the date of the order, such rates or terms and conditions of service as the commission determines to be just, reasonable, and necessary. If it is found that any term or condition of service, practice, or act relating to any service performed or to be performed by such utility is in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unduly preferential, or otherwise in violation of any of the provisions of the act or of any of the laws of the State of Nebraska, the commission may substitute therefor by order such other terms and conditions of service, practice, service, or act as it determines to be just, reasonable, and necessary, to be effective as of the date of the order.

Thus, consistent with the foregoing statutory provisions and the deference that the Commission is required to afford utilities in conducting their affairs, the Commission's authority to address the service offerings of utilities is strictly remedial. This limitation on the Commission's powers is shown by the following two sections of the Regulation Act governing service offerings and related rate design principles.

The first provision is Section 66-1851. The first subsection of Section 66-1851 permits jurisdictional utilities, "[n]otwithstanding any other provisions of the State Natural Gas Regulation Act", to "file with the commission rates and one or more rate schedules and other charges, and rules and regulations pertaining thereto, that enable the utility to provide service to ratepayers under customer choice and other programs offered by a utility to unbundle one or more elements of the service provided by the utility". Under the second subsection of Section 66-1851, the Commission's only authority with respect to such unbundling programs is to "eliminate or modify the terms of any customer choice or other unbundling programs in existence on the effective date of this act, or as thereafter modified by a filing made by the jurisdictional utility", and only "as permitted by the act after complaint or the commission's own motion and hearing". Specifically, under the third subsection, the Commission "may not modify the provisions of a program under this section except upon complaint or the commission's own motion, wherein the commission finds, after hearing, that one or more aspects of the program are unduly preferential, unjustly discriminatory, or not just and reasonable".

The second such provision is Section 66-1855. That section empowers the Commission to:

> *** authorize, consistent with general regulatory principles, including, but not limited to (1) banded rates with a minimum and maximum rate that allows the jurisdictional utility to offer ratepayers rates within the rate band for the purpose of attracting additional natural gas service demand or to retain such demand, (2) mechanisms for the determination of rates by negotiation, and (3) customer choice and other programs to be offered by a natural gas public utility to unbundle one or more elements of the service provided by the utility.

The use of the term "authorized", combined with the provisions of Section 66-1851 addressing utility-proposed customer choice and other unbundling programs, establishes that the Commission may authorize banded rates or negotiated rate mechanisms under Section 66-1855 only if the utility has requested authority to implement such rates or rate mechanisms. Even if the Commission could authorize such rates and rate mechanisms on its own initiative, the utility would be required to exercise discretion to determine when a discounted rate is appropriate to offer. This is because banded and negotiated rates, as generally understood, provide jurisdictional utilities with the ability to maintain or enhance load that otherwise would be lost by providing the affected customer with a customized rate.

The final statutory provision relevant to these comments is Section 66-1853(3). That section provides:

> Every jurisdictional utility shall be required to furnish reasonably adequate and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied, or produced by such utility.

This provision requires that the Commission and jurisdictional utilities always account for the impact that the utility's service offerings and rates will have on the adequacy and sufficiency of the service provided by the utility.

V. Relevant Tariff Provisions.

Kinder Morgan's Tariff provides service to its jurisdictional customers, as well as a few high-volume customers, through three service offerings. These service offerings are Rate Schedule CGS (Choice Gas Service), Rate Schedule ACGS - NSS (Agricultural Choice Gas Service - Non-Seasonal Service) and Rate Schedule ACGS - SS (Agricultural Choice Gas Service - Seasonal Service). Rate Schedule CGS is available to residential, commercial and industrial customers, but not to agricultural customers. Rate Schedule ACGS - NSS is available to customers whose natural gas usage is primarily agricultural and year-round. Rate Schedule ACGS - SS is available to customers whose natural gas usage is primarily agricultural for the following applications: irrigation and/or grain drying. The substantive provisions and rates applicable to Rate Schedule CGS also are applied to customers served under Rate Schedule ACGS - NSS.

Under Kinder Morgan's Tariff, the rates charged jurisdictional customers have several components, including but not limited to, the following:

Customer Charges.

Each jurisdictional customer is charged a customer charge. This charge is a fixed monthly charge that recovers a portion of the fixed costs that Kinder Morgan incurs in providing service to customers. Excluding a $2 per month surcharge being charged to customers residing within the corporate limits of eighteen municipalities to pay settlement costs related to litigation initiated by those municipalities, Kinder Morgan's residential customer charges range from $3 per month (Rate Areas 1 through 5) to $5 per month (Rate Areas 6 through 11), and its commercial and industrial customer charges range from $4 per month (Rate Areas 1 through 5) to $6 per month (Rate Areas 6 through 11).[3] Even though the fixed price of providing service may be higher for some of the higher-volume jurisdictional customers, they pay the same customer charge as the lower-volume commercial customers.

Non-Gas Distribution Charges.

Each jurisdictional customer is charged a non-gas distribution charge. This charge is determined monthly based on the customer's metered usage for the month. Kinder Morgan currently uses a declining block rate structure which provides for lower per therm charges as the customer's usage increase. As an example, the non-gas distribution charges for residential and commercial customers in Rate Area 1 are as follows:

Tier	Residential ($ per Therm)	Commercial ($ per Therm)
First 10 Therms	0.269238	0.439268
Next 40 Therms	0.244238	0.414268
Next 450 Therms	0.094203	0.094203
Over 500 Therms	0.069203	0.069203

Under a declining block rate structure, a customer using over 500 therms in a month will pay a lower, average non-gas distribution charge than a customer using fewer than 500 therms in the month. Higher-volume customers such as the Waiver Customers generally use significantly more than 50 therms per month, thereby qualifying for a substantial per therm reduction in their non-gas distribution charge over customers using less than 50 therms per month.

[3] The $2 surcharge was approved by the Commission by its Order Approving Settlement entered on June 8, 2004 in Application No. NG-0020/PI-80. Kinder Morgan began billing the surcharge to affected customers in late summer, 2004.

Gas Supply Cost Adjustment Charges.

Each jurisdictional customer is charged a gas commodity charge calculated under Section 7, Gas Supply Cost Adjustment CGS (Choice Gas Service), of the General Terms and Conditions of Kinder Morgan's Nebraska Gas Tariff. This charge is determined monthly based on the customer's metered usage for the month. The currently-effective GSCA, which was approved by Commission Order entered June 21, 2005 in Application No. NG-0023.1, is $0.009896 per therm. The GSCA currently has three components – the P-0802 charge ($0.009583 per therm), the Transition-191 Charge (a negative $0.000035 per therm), and the Other Services Charge ($0.000348 per therm).

Gas Supplier Commodity Charges.

All jurisdictional customers, including those Waiver Customers not participating in the Choice Gas Program, purchase their gas supplies either from Kinder Morgan, acting in its capacity as a participating supplier in the Choice Gas Program, or from a third party gas marketer. With two exceptions - Seminole Energy Services, which serves 19 high-volume ratepayer accounts and seven Waiver Customer accounts, and U.S. Energy Services, Inc., which serves a single high-volume ratepayer account – all of the gas marketers selling gas to Kinder Morgan customers, whether jurisdictional or high-volume, also participate in the Choice Gas Program.

Negotiated and Discounted Rates.

Section 12 of the General Terms and Conditions of Service (Original Sheet No. 68) authorizes Kinder Morgan to enter into negotiated rate arrangements with a customer without reference to the applicable rates set forth on the Schedule of Rates and Other Charges of its

Nebraska Gas Tariff. Section 13 of the General Terms and Conditions of Service (also on Original Sheet No. 68) authorizes Kinder Morgan to discount any rate applicable to a customer, except the Supplier Commodity Charge, when such discounting is appropriate, in Kinder Morgan's judgment, to retain existing customer load or otherwise.

VI. Issue-By-Issue Comments.

Issue 1: The Permissible Scope of the Commission's Jurisdiction.

The Commission's Order identifies this issue as follows:

> Whether the Commission has the requisite jurisdiction to require an alternative rate design.

In its Order Opening Docket, the Commission uses a broad definition of "rate design", which encompasses both the service offerings to customers, and the individual rates charged customers. Under the Regulation Act, the Commission has limited authority with respect to the former, and broader authority with respect to the latter.

With respect to service offerings, as previously discussed in these Comments, the Commission cannot require a jurisdictional utility to offer customer choice or other retail unbundling programs. Section 66-1851 clearly states that the decision whether to offer such programs rests with the utility. The Commission's role is to determine, on its own initiative or upon a complaint, and after notice and hearing, whether one or more elements of the program are unduly preferential, unjustly discriminatory, or not just and reasonable. If such a finding is made, the Commission may fashion appropriate relief to address the objectionable features of the program. Under Section 66-1855, the Commission also may authorize banded rates and negotiated rate mechanisms. The Regulation Act grants the utility the discretion to determine whether to propose such rates or mechanisms and, if they are approved by the Commission under

Section 66-1855, the circumstances under which a discounted or negotiated rate is appropriately provided to a customer. Thus, the Regulation Act's approach to Commission oversight is consistent with the previously discussed Nebraska Supreme Court decisions which afford deference to utilities in determining how their business should be run.

Issue 2: Characteristics of Commercial and Industrial Customers.

The Commission's Order describes this issue as follows:

> Characteristics common to small and mid-size commercial and industrial [ratepayers] whose natural gas consumption does not meet the statutory minimum for "high-volume ratepayers".

Kinder Morgan collects data identifying the types of commercial/industrial businesses that it serves.[4] On a numeric basis, the categories of commercial/industrial businesses which involve at least 200 accounts on the Kinder Morgan system, are as follows:

Category of Business	Number of Customer Accounts
Religious Organizations	939
City/County Offices	736
Eating Places	427
Elementary/Secondary Schools	406
Hotels/Motels/Boarding Houses	326
Automotive Repair	318
Banking Institutions	252
Gasoline Service Stations	236
Beauty/Barber Shops	229
Private Households	208
Miscellaneous Business Services	200

Other commercial/industrial enterprises constituting at least 100 accounts on the Kinder Morgan system are: Drinking Places (178), Auto Dealers (174), Amusement and Recreation Services (165), United States Postal Service (164), Membership Organizations (149), Retail Farm

[4] This data is collected from customers classifying themselves by Standard Industrial Codes (SIC) and Standard Codes (SRC). .

Machinery/Supplies (148), Agricultural Production - Crop (147), Insurance Agents/Brokers/Services (142), Nursing Homes/Care Facilities (141), Retail Food Stores (139), Legal Services (132), Telephone Communications (130), Trucking and Storage Services (129), Agricultural Production - Livestock (124), Fire Departments (119), Doctor's Offices and Clinics (114), Farm Produce Warehousing/Storage (112), Auto and Home Supply Stores (108), Lumber/Other Building Material Dealers (103), Retail Clothing/Shoe Stores (103), and Funeral Services/Crematories (100).

The Waiver Customers fit within the following SIC/SRC Codes:

Waiver Customer	Description
Baldwin Filters	1 of 7 Nebraska commercial accounts served by KMI under SIC Code Description "MFG Transport. Equipment & Parts"
Bethpage Mission	1 of 82 Nebraska commercial accounts served by KMI under SIC Code Description "Hosp/Mental Health Facilities"
Cabelas, Inc.	1 of 8 Nebraska commercial accounts served by KMI under SIC Code Description "Catalog/Mail Order Houses
Christian Homes, Inc.	1 of 141 Nebraska commercial accounts served by KMI under SIC Code Description "Nursing Homes/Care Facilities"
Dinklage Feed Yards, Inc.	1 of 124 Nebraska commercial accounts served by KMI under SIC Code Description "Agricultural Prod - Livestock"
Ideal Linen Supply	1 of 21 Nebraska commercial accounts served by KMI under SIC Code Description "Dry Clean Laundry Services"

International Media & Cultures (IMAC)	1 of 2 Nebraska commercial accounts served by KMI under SIC Code Description "Nat. Process & Imit. Cheese Mfg"
Ipso Tubulars, Inc.	1 of 63 Nebraska commercial accounts served by KMI under SIC Code Description "Fabricated Metal Products"
Krone Digital (2 accounts)	2 of 7 Nebraska commercial accounts served by KMI under SIC Code Description "MFG Transport. Equipment & Parts"
Orthman Manufacturing	1 of 63 Nebraska commercial accounts served by KMI under SIC Code Description "Fabricated Metal Products"
Panhandle Feeders	1 of 3 Nebraska commercial accounts served by KMI under SIC Code Description "Production/Feeding Cattle"
Youth Rehab & Treatment Center	1 of 5 Nebraska commercial accounts served by KMI under SIC Code Description "Correctional Facilities"

In Kinder Morgan's view, this data demonstrates that the Waiver Customers either operate businesses that are common within Kinder Morgan's service territory, or are engaged in activities that are substantially similar to the business activities of other Kinder Morgan customers. For instance, while Baldwin Filters and Krone Digital comprise three of the seven accounts classified as "MFG Transport. Equipment & Parts", Kinder Morgan serves at least 152 commercial or industrial accounts engaged in manufacturing one product or another. There is nothing in the customer profile of Baldwin Filters or Krone Digital that differentiates them from other manufacturing enterprises with respect to rate design.

Indeed, Kinder Morgan's commercial and industrial customers generally share several common characteristics. These commonalities include: the need for reliable natural gas service;

the typical usage of natural gas service; a low load factor profile; and a lack of operational alternative fuel capabilities. These common customer characteristics are examined further below.

Need for Natural Gas Service.

The vast majority of companies served by Kinder Morgan are for-profit businesses. Those enterprises that are not operated on a for-profit basis tend to provide governmental or other essential public services. Whether for-profit or not, these businesses and agencies provide necessary goods and/or services to the public. They clearly wish to be open during normal business hours and the public wants them to be open during normal business hours. Reliable gas service is a prerequisite to meeting this goal, and it is therefore essential that Kinder Morgan, the customer and the Commission avoid any action that would jeopardize the reliability of the Kinder Morgan system. To this end, customers should not be allowed the option of taking a service offering that is inadequate to meet their actual gas service needs. If this is allowed to happen, the result invariably threatens the reliability of service or creates unjustifiable cost subsidies between customers.

Natural Gas Service Usage.

Except for the amount of usage, the gas usage patterns of Kinder Morgan's commercial and industrial customers differ little from those of residential customers served by Kinder Morgan who use natural gas for space heating, water heating and cooking. Indeed, customers such as hospitals, restaurants, schools and lodging establishments are likely to use natural gas in all three of these applications. The other businesses that use natural gas for a manufacturing or other business application generally qualify as high-volume ratepayers not subject to Commission regulation.

Low Load Factor Usage.

The typical commercial and industrial customer served by Kinder Morgan has a load factor similar to residential customers, especially when they use gas mainly for space heating. Load factor is a measure of a customer's peak or design day usage compared to annual usage. Customers that use gas principally for space heating have relatively low load factors because their peak or design day usage (a furnace running regularly on a very cold day) will be high relative to their annual usage. By contrast, a customer that operates a power plant daily using natural gas as a boiler fuel will have a relatively high load factor because the usage of gas is consistent on a daily basis throughout the year. A high load factor signals that the customer is showing a more consistent or flat use pattern of the facilities installed on its behalf and of the upstream pipeline capacity acquired for the customer's use. These factors can form the basis for giving the high load factor customer a more favorable rate than a customer operating with a low load factor. However, the load factors of Kinder Morgan's typical commercial and industrial customers do not provide a basis for such rate treatment.

Alternative Fuel Capability and Curtailment.

Kinder Morgan's natural gas service through Choice Gas is the best available option for commercial and industrial customers to meet their space heating, water heating and cooking needs. Kinder Morgan's experience is that the small number of customers that maintain alternative equipment for burning a fuel other than natural gas either do not maintain that equipment in working order, or do not keep adequate supplies of the alternative fuel to meet their needs in case of supply interruptions. Additionally, the process of switching to an alternative fuel on a given day is rarely as simple as flipping a switch. The process can be time-consuming, which in most cases makes it infeasible for a customer to switch to the alternative fuel source in the course of a single gas day after receiving notice of an impending natural gas curtailment. Instead, the customer is likely to continue using natural gas unless and until the utility physically terminates the gas flow to the customer. Importantly, by failing to switch to alternative fuel, the customer jeopardizes the reliability of the service provided by Kinder Morgan to other firm customers. Moreover, the physical act of curtailing of service to customers that putatively possess alternative fuel capability is often not a viable choice, particularly for human needs customers such as hospitals, correctional institutions and assisted living units.

The importance of providing reliable supply of natural gas service to Kinder Morgan's customers must be the paramount concern of Kinder Morgan and the Commission. This requires that Kinder Morgan maintain adequate transportation capacity to ensure that gas will flow to all of its customers every day of the year, and that all customers pay for this capacity through just and reasonable rates. The Commission should avoid any actions with respect to alternative rate designs that might jeopardize the reliability of any jurisdictional utility's service.

Issue 3: Potential Alternative Rate Designs.

The Commission's Order delineates this issue as follows:

Possible alternative rate designs for said ratepayers.

Kinder Morgan believes its existing rates allow it to provide, in the words of the Regulation Act, "reasonably adequate and sufficient service" at just and reasonable rates. Kinder Morgan also maintains that its current service offerings are appropriate and not in need of change. It therefore is not proposing any alternative rate designs at this time. Any rate design alternatives that could be implemented that would benefit one or more classes of its customers, must not degrade the quality or reliability of service provided to other customers, or call for a subsidy of one class of customers by another.

As discussed earlier, Kinder Morgan offers service to jurisdictional customers under three Choice Gas rate schedules customized for their particular circumstances. Rate Schedule CGS is available to year-round users of gas that are not agricultural customers. The principal use of gas by these customers is for space heating. To ensure that these customers receive reliable service during the peak winter months, Kinder Morgan subscribes to sufficient firm upstream pipeline capacity to serve these customer's "design-day" needs[5]. Under the terms of Rate Schedule CGS, this capacity then is released temporarily to suppliers participating in the Choice Gas Program under that rate schedule in proportion to the aggregate design day requirements of the customers choosing that supplier for their commodity purchases.

Rate Schedule ACGS - NSS is the second of the three Choice Gas rate schedules available to Kinder Morgan customers. This rate schedule is available to agricultural customers with year-round usage whose principal use of gas is for applications other than irrigation and/or grain drying. An example of a customer that would be served under this rate schedule is an operator of a feedlot. As these customers add to the winter peak requirements on the Kinder Morgan system, Kinder Morgan obtains firm upstream pipeline capacity for them which, pursuant to the requirements of the rate schedule, is temporarily released to suppliers

[5] The design day is defined as the coldest day that the utility expects to experience on its system.

participating under Rate Schedule ACGS - NSS in proportion to the aggregate design day requirements of the customers choosing that supplier for their commodity purchases.

Rate Schedule ACGS - SS is the third of the three Choice Gas rate schedules available to Kinder Morgan customers. This rate schedule is available to agricultural customers with seasonal usage whose principle use of gas is for irrigation and/or grain drying. These customers do not add to the winter peak requirements on the Kinder Morgan system. Rather, their peak day occurs either during the summer (irrigation customers) or the fall (grain drying customers) when a supply interruption will not jeopardize human life. Accordingly, Kinder Morgan does not require that the suppliers selling gas commodity to customers served under this rate schedule obtain firm upstream pipeline capacity for them.

The principal benefit that the Waiver Customers and others seek to receive[6] by taking transportation service, rather than Choice Gas Program service, is to achieve cost savings that may not be possible compared to service backed up by firm, primary-path,[7] upstream pipeline

[6] The Waiver Customers presumably believe that they are achieving savings in their upstream pipeline costs. These customers are required to pay a $200 monthly administrative charge. They are also required to pay for the installation of electronic flow measurement (EFM) equipment installed at their delivery point, and the on-going costs of supporting the EFM equipment. The upshot is that each transportation customer must achieve at a minimum of $2400 plus the amortized cost of the EFM equipment, as applicable, in annual cost savings in its upstream pipeline arrangements in order to merely break even when compared to the experience of those Choice Gas Program customers that are bearing the cost of the upstream pipeline capacity acquired by Kinder Morgan on their behalf.

[7] Every upstream pipeline firm transportation contract provides for transportation along at least one "primary path", which is the path between the primary receipt point designated in the contract through which the customer's gas is received into the pipeline and the primary delivery point designated in the contract to which the customer's gas is delivered by the pipeline back to the customer. A "secondary path" refers to a pipeline path that the pipeline allows a customer to use on one or more days along a path that either begins at a receipt point or ends at a delivery point that is not designated in the contract. Except in the case of a capacity curtailment, a firm transportation customer always is entitled to use its primary path up to the maximum daily transportation quantity (MDTQ) specified in its transportation contract. A firm transportation customer must be allowed to use a secondary path when capacity along the path is available, on a first-come, first-served basis, but has no entitlement to use the secondary path when capacity along that path is not available.

transportation capacity. Alternative fuel capability aside, having adequate firm, primary-path, upstream pipeline transportation capacity is the only means of ensuring year-round deliveries of gas to a customer. It also is the most expensive. A customer allowed to do so frequently will be willing to cut corners on its upstream pipeline capacity in order to save money, especially when cutting corners has no impact on deliveries of gas to the customer

A transportation customer has many options for cutting corners. For instance, it may fail to subscribe to the proper level of firm upstream pipeline capacity, or it may subscribe to sufficient firm capacity, but along a cheaper, secondary path that cannot guarantee that the customer's gas will be delivered on a daily basis to Kinder Morgan's system. Alternatively, the customer may subscribe only to interruptible upstream pipeline capacity. If the customer eschews firm capacity in favor of interruptible capacity, the savings to the customer will be greater, but the risk that the pipeline will not deliver the customer's gas to Kinder Morgan's system also is much greater. When a transportation customer's gas does not arrive into the Kinder Morgan system and the customer does not respond by curtailing its gas usage, the customer is taking gas and using capacity acquired on behalf of other customers. This is a case of a forced subsidization of an irresponsible customer by other customers. Even if such a subsidy would pass statutory muster, the determination of which would require an evaluation of the specific facts of the case, the Commission should not endorse policies that promote the occurrence of such subsidies.

As previously mentioned, the fact that Kinder Morgan requires that service to its year-round jurisdictional customers must be backed up with firm upstream pipeline capacity does not mean that the customer is required to bear the full cost of the capacity. Whether the customer does so or not depends on the efficiency of the use of the capacity by the customer's supplier and the willingness of the supplier to pass savings that are achieved onto its commodity customers. As an example, a supplier knows that firm upstream pipeline capacity acquired principally to serve heating season load will be underutilized during non-winter months. The supplier therefore will seek seasonal customers who have a need for the capacity during the non-winter months. In other words, the supplier will seek to maximize its use of the capacity year-round. Any revenue generated from the non-primary users of the capacity can form a pool that allows the supplier to reduce the commodity prices charged to Choice Gas Program customers below the level that would be charged if the customer actually were bearing the full burden of the upstream pipeline capacity costs. The competitive environment for commodity supplies created by the Choice Gas Program enhances the prospects that participating suppliers in fact will pass through a portion of those cost savings onto the customers that choose them as their commodity supplier.

The foregoing discussion and that provided in response to Issue 4, *infra*, demonstrates that Kinder Morgan's existing service offerings and the rate design embodied in those service offerings produce an appropriate environment for its customers that obviates the need for an alternative rate design on the Kinder Morgan system.

Issue 4: Technical Issues Related to Alternative Rate Designs.

The Commission's Order identifies this issue as follows:

> Technical issues related to implementation of alternate rate designs including but not limited to metering and flow control.

As noted, Kinder Morgan believes its current offerings meet the needs of its customers, including the Waiver Customers. From a public policy standpoint, the Commission should not make any rate design directives that require jurisdictional utilities to permit customers to participate in service offerings that do not meet their needs. Specifically, the Commission should not adopt any rate design principles that create the risk that a jurisdictional utility will be required to curtail service to human needs customers or that require jurisdictional customers to subsidize the service being provided to any other jurisdictional customer.

As Kinder Morgan explained during the Plan of Action proceedings in Application No. NG-0023.1, if the Commission elects not to heed this advice, any rate design that permits year-round customers to receive service that is not backed up with adequate firm upstream pipeline capacity must also require installation of flow control equipment at the customer's delivery point. The flow control equipment would permit Kinder Morgan to curtail the flow of gas to customers on days when Kinder Morgan does not receive adequate supplies of the customer's gas into its system. If the Commission pursues such a rate design, the Commission's regulations should contain an express authorization for jurisdictional utilities to curtail customers on any day where the customer's gas is not delivered to Kinder Morgan, so that service to the utility's Nebraska distribution system is not jeopardized. The Commission also should authorize substantial penalties in the tariffs of jurisdictional utilities that would be applied with respect to any gas taken by a customer during a gas day on an unauthorized basis. Gas takes would be deemed unauthorized to the extent that they exceed the amount of gas delivered to Kinder Morgan on the customer's behalf during that gas day. The Commission's regulations then also should allow a jurisdictional utility to pass on any penalties incurred on the upstream pipeline associated with unauthorized takes of gas from Kinder Morgan. These are the proper protections that must be in place with respect to customers given the discretion to determine their own capacity needs, including the amount of capacity required and the appropriate mix of upstream pipeline services appropriate to meet those needs.

Other technical issues that could arise with alternative rate designs include, but are not limited to: (a) the need to obtain additional capacity on the upstream pipeline or install additional facilities on the jurisdictional utility's system; (b) the need to re-program information technology systems to work with the new rate design; (c) the need to educate employees and customers with respect to the availability and operation of the alternative rate designs; (d) the need for regulatory filings necessary to implement the alternative rate designs, possibly including the need for a general rate filing before the Commission; and (e) the need to interface flow control equipment located at the customer's meter with the Kinder Morgan control center through the use of dedicated SCADA communication equipment and automation.

Kinder Morgan cannot meaningfully evaluate the technical issues accompanying an alternative rate design without substantial detail as to the terms of that rate design. Kinder Morgan reserves the right to supplement these comments to address specific alternative rate designs proposed by the Commission, Commission staff, or any other participant in this docket.

Issue 5: Implementation Costs.

The Commission's Order recites the following issue:

> Costs associated with implementation of possible alternate rate designs for ratepayers.

The costs associated with implementing possible alternative rate designs for ratepayers also will depend greatly on the alternate rate design adopted. The costs of installing flow control are estimated by Kinder Morgan at $37,903 per installation, detailed as follows:

EFM	$ 6,000
Phone & Power for EFM	1,000
Control Valve	3,000
Other Valves and Fittings	6,500
Right-of-Way	3,000
Labor	4,000
Subtotal	23,500
Tax Gross-up (KMI income tax rate of 38%)	14,403
Total per Installation	$37,903

As with the technical issues addressed with respect to Issue 4, Kinder Morgan cannot meaningfully evaluate the total costs accompanying an alternative rate design in the absence of substantial detail as to the terms of that rate design. Kinder Morgan reserves the right to supplement these comments to address specific alternative rate designs proposed by the Commission, Commission staff, or any other participant in this docket.

Issue 6: Appropriate Statutory and Regulatory Changes.

The Commission's Order requests comment on the following:

Any statutory or regulatory changes necessary for alternate rate designs.

As with the technical issues addressed under Issue 4 and costs addressed under Issue 5, Kinder Morgan cannot meaningfully evaluate the statutory or regulatory changes that might be required to authorize an alternative rate design without knowing the proposed components of that rate design. Kinder Morgan refers the Commission to the discussion in Sections III and IV of these Comments relating to limits on the Commission's authority to review and establish utility rates. Additionally, Kinder Morgan's response to Issue 4 addresses some of the regulatory (regulation and tariff) changes that would be appropriate in the event of an alternative rate design that permits customers discretion to determine their own capacity needs, including the amount of capacity required and the mix of upstream pipeline services appropriate to meet those needs. Kinder Morgan reserves the right to supplement these comments to address specific alternative rate designs proposed by the Commission, Commission staff, or any other participant in this docket.

VII. Conclusion.

Alternative rate designs can have a dramatic impact on the service provided by jurisdictional utilities, by jeopardizing the reliability of the utility's service and/or creating unlawful subsidies between customers. As noted, the Commission has limited authority is this area, and Kinder Morgan respectfully submits that its current service offerings are appropriate for its customers. Kinder Morgan urges the Commission to proceed cautiously, and with a full understanding of the relevant facts, before issuing any orders that would require jurisdictional utilities to adopt service offerings or other rate design principles that are not now incorporated in the utility's currently-effective tariff.

DATED this 6th day of September, 2005.

RESPECTFULLY SUBMITTED,

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